



Navigators and Agents/Brokers



DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS for MEDICARE & MEDICAID SERVICES
Center for Consumer Information and Insurance Oversight

Health Insurance Exchange System-Wide Meeting
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Agents and Brokers: Exchange Final Rule

- Exchange final rule provides States discretion to permit agents and brokers to enroll qualified individuals and employers/employees in QHPs in the individual and small group markets.
- States have flexibility to use agents and brokers to:
 - Enroll qualified individuals in a QHP in a manner that constitutes enrollment “though the Exchange” (supports access to advance payments of the premium tax credit and cost-sharing reductions)
 - Assist individuals in applying for advance payments of premium tax credit and cost-sharing reductions
- States may elect to provide information regarding licensed agents and brokers on the Exchange website for the convenience of consumers.

Agents and Brokers: Enrollment Through Exchange and APTC Assistance

- If the State elects to allow agents and brokers to work with qualified individuals in enrolling in QHPs “through the Exchange” and assist in applying for advance payments of the premium tax credit and cost-sharing reductions, the agent or broker must:
 - Ensure that the individual completes the eligibility verification and enrollment application using the Exchange website
 - Enrollment information must be transmitted by the Exchange to the QHP issuer so that the issuer can effectuate enrollment
 - In case of web-broker, their website may also be integrated (see next slide)
 - Adhere to applicable State law and regulations
 - Comply with the terms of an agreement with the Exchange, under which:
 - Agent/broker registers with the Exchange
 - Receives training on QHP options and affordability programs
 - Complies with Exchange privacy and security requirements

Web-Brokers: Enrollment Through Exchange

- Final rule provides option for States to permit web-brokers to assist qualified individuals in enrolling in QHPs “through the Exchange” and in applying for advance payments of the premium tax credit and cost-sharing reductions
 - Agent/broker website may be used to provide alternate plan comparison/shopping and selection venue; may help draw consumers to Exchange and QHPs
 - Not intended to replace Exchange website
- Web-brokers must comply with all agent/broker requirements
- Web-brokers’ websites must meet the following additional requirements:
 - Follow final rule’s website standards for disclosure/display of QHP information
 - Provide ability to view all QHPs offered through Exchange
 - Not provide financial incentives for enrollment (e.g., rebates, giveaways)
 - Display all QHP data provided by Exchange
 - Maintain records and audit trail for 10 years
 - Ensure consumers can withdraw and go to Exchange website

Agent and Brokers: Possible Scenarios

Potential Example 1: Traditional Agent or Broker on Exchange Web Site

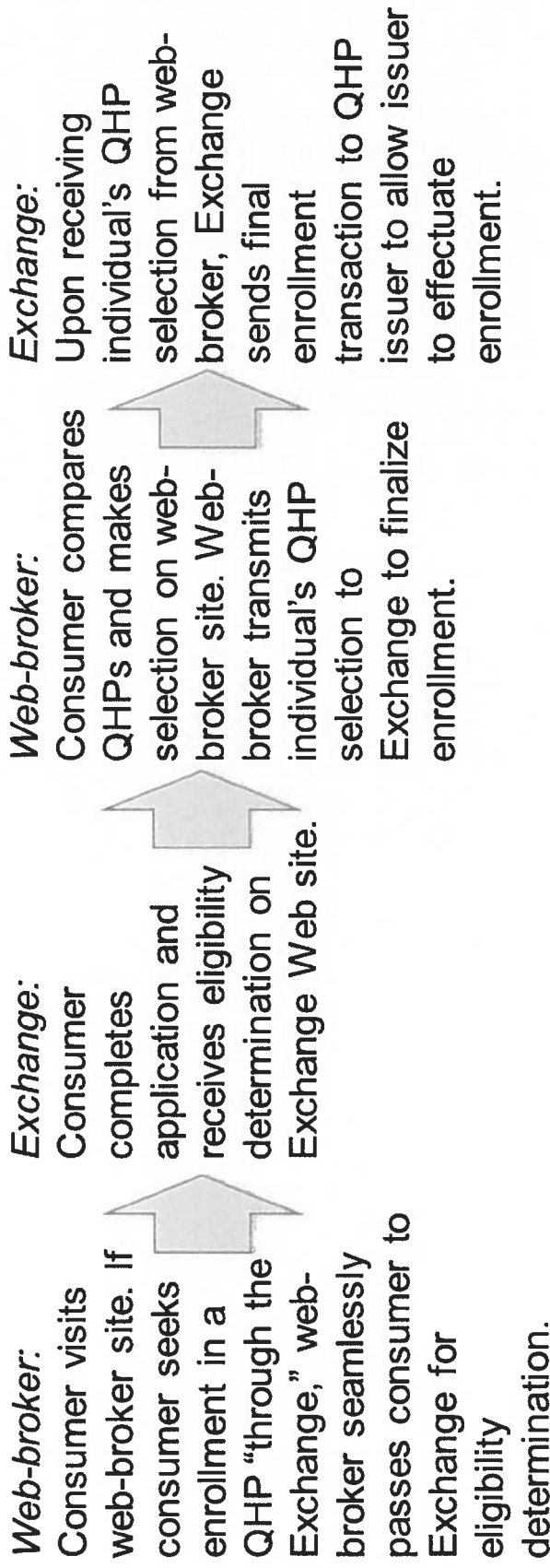
All activities take place on Exchange website

“Traditional” agents and brokers work one-on-one with individuals to help them complete the application process, receive an eligibility determination, and select and enroll in a QHP.

Agent and Brokers: Possible Scenarios

Potential Example 2: Web-broker provides Alternate Plan Compare and Selection Process

Interfaces between Exchange and web broker create a seamless consumer experience



Agent/Broker Enrollment Through Exchange: Key Takeaways

- For all agents and brokers, including web-brokers:
 - “Enrollment through the Exchange” is critical for individuals seeking advance payments of premium tax credit and cost-sharing reductions
 - Agent/broker/web-broker facilitates enrollment, but Exchange transmits enrollment information to QHP issuer
 - Exchange can provide information to QHP issuers identifying the agent, broker or web-broker as part of the enrollment transaction, thereby supporting compensation of agents, brokers, and web-brokers by issuers
 - Must enter into agreements with the Exchange, maintain State licensure, complete training and adhere to privacy/security policies
- For web-brokers only:
 - Provide a seamless consumer experience and meet additional consumer protection requirements
 - Must display all on its website all QHPs offered on the Exchange and facilitate enrollment into all such QHPs
 - Must meet same standards for website display of QHP information

Individual Market Exchange vs. SHOP

- Individual Market Exchange:
 - Agents and brokers must:
 - Be familiar with affordability programs, including Medicaid, advance premium tax credits and cost-sharing reductions, and must understand income requirements
 - Sign agreement, complete training and adhere to privacy rules
 - States may apply additional conditions beyond Federal minimum standards
- SHOP
 - States have flexibility to specify conditions with respect to agent/broker assistance in enrolling through SHOP
 - Agreement with SHOP is not required in final rule, but is recommended
 - Recommended training would cover unique features of SHOP, including employee choice model, employer contribution options, premium aggregation, etc.
 - Expected role of brokers in SHOP environment should also be addressed, including ongoing customer service and online enrollment expectations

Exchange Navigator Program

- Exchanges must establish a grant program to fund entities or individuals called “Navigators” that will provide consumer assistance and will:
 - Maintain expertise regarding Exchanges,
 - Provide all information to consumers in a fair, accurate and impartial manner,
 - Facilitate QHP selection,
 - Refer consumers to other resources, and
 - Provide information in a culturally and linguistically accessible manner.
- Exchanges must select at least two types of entities to be Navigators, one of which must be a community or consumer-focused non-profit.
- Navigators cannot accept indirect or direct compensation from issuers for enrolling individuals in QHPs or other health plans offered outside of the Exchange.

Exchange Navigator Program

- Exchanges must develop conflict of interest standards that will apply to all entities and individuals serving as Navigators.
- Exchanges must develop training standards that will apply to all entities and individuals serving as Navigators. These standards will ensure that Navigators have expertise in at least:
 - The needs of underserved and vulnerable populations;
 - Eligibility and enrollment rules and procedures;
 - The range of QHP options and insurance affordability programs; and,
 - The privacy and security standards that apply to the Exchange.
- HHS will release model standards in three areas in the coming year: conflict of interest, training, and cultural and linguistic competency.

Blueprint for Approval of Affordable State-based and State Partnership Insurance Exchanges
Sections 2.6-2.9

Exchange Activity	Supporting Documentation*
<p>2.6</p> <p>The Exchange has established or has a process in place to establish and operate a Navigator program that is consistent with the applicable requirements of 45 CFR 155.210, including the development of training and conflict of interest standards, and adherence to privacy and security standards specified in 45 CFR 155.210 and 45 CFR 155.260.</p>	<p>Brief description of Exchange's plan to operate a Navigator program, including documentation outlining the Exchange's progress in developing conflict of interest and training standards; how it will ensure Navigators are appropriately trained and meet the Exchange's conflict of interest, privacy and security standards; and a timeline and strategy for funding for the Navigator program and making the program fully operational.</p>
<p>2.6a</p> <p>The Exchange has established or has a process in place to establish and operate a Navigator program that is consistent with the applicable requirements specified in 45 CFR 155.210 and 45 CFR 155.260.</p>	
<p>2.6b</p> <p>The Exchange has a plan for the ongoing funding of an Exchange Navigator program, in order to award at least two (2) types of entities, one of which is a community or consumer-focused organization or non-profit entity. Grant agreements ensure that Navigator grantees ("Navigators") will conduct the five (5) duties outlined in 45 CFR 155.210(e).</p>	

2.9	<p><i>If applicable:</i> If the State permits activities by agents and brokers pursuant to 45 CFR 155.220(a), the Exchange has clearly defined the role of web brokers including evidence of licensure, training, and compliance with 45 CFR 155.220(c)-(e). Specifically, the Exchange has agreements with web brokers consistent with 45 CFR 155.220(d), which address agent/broker registration with the Exchange, training on QHP options and Insurance Affordability Program(s), and adherence to privacy and security standards, as specified in 45 CFR 155.260.</p>	<p><i>If applicable:</i> Brief description of how the Exchange's Internet Web site will interface with web brokers' Web sites.</p> <p>AND</p> <p><i>If applicable:</i> Brief description of Exchange's policy for ensuring compliance with 45 CFR 155.220(c)(3),(d) and (e), including how it will ensure web brokers are appropriately trained and meet the Exchange's privacy and security standards.</p>
2.9a	<p><i>If applicable:</i> The Exchange has a process to verify that web brokers are in compliance with State law including licensure requirements consistent with 45 CFR 155.220(e).</p>	
2.9b	<p><i>If applicable:</i> The Exchange has agreements with web brokers, consistent with 45 CFR 155.220(d), which address web broker registration with the Exchange, training on QHP options and Insurance Affordability Program(s), and adherence to privacy and security standards, as specified in 45 CFR 155.260.</p>	

General Guidance on Federally-facilitated Exchanges
Center for Consumer Information and Insurance Oversight
Centers for Medicare & Medicaid Services
May 16, 2012

Excerpt relating to Navigators and Agents (p. 15-16)
<http://cciio.cms.gov/resources/files/ffe-guidance-05-16-2012.pdf>

Consumer Support, Outreach, and Education

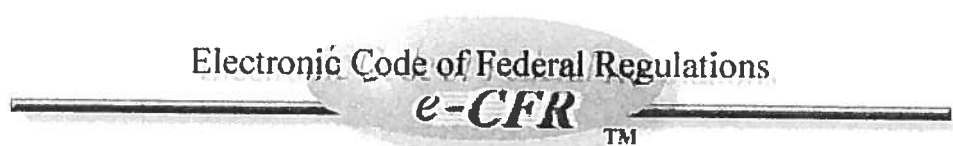
HHS will conduct an outreach and education campaign to raise awareness of and promote enrollment in QHPs and insurance affordability programs through an FFE. As described earlier in this document, we encourage States to consider a State Partnership in consumer assistance. States already have relationships with local community and business organizations that will be critical for effective outreach and assistance to consumers. FFEs will assist consumers in receiving eligibility determinations for all insurance eligibility programs, comparing and selecting QHPs, and enrolling in a QHP. FFEs will offer a Web site, toll-free hotline, and other in-person assistance, which will also be accessible to persons with disabilities and those with limited English proficiency. FFEs will establish Navigator programs by awarding grants to eligible entities that can assist consumers in understanding insurance affordability programs, comparing and selecting QHPs, and interacting with QHP issuers, State agencies, and the FFE. Navigators will also conduct public education and outreach about Exchanges and provide referrals to other resources, as appropriate. It is HHS' intent to award Navigator grants prior to 2014,⁷ with the goal of establishing a fully operational Navigator program in every FFE by October 1, 2013, so that all entities and individuals serving as Navigators are fully trained, certified, and ready to serve consumers, including those with disabilities and limited English proficiency. In addition to the Navigator program, HHS envisions that consumers will be able to receive in-person assistance from a variety of other consumer resources, including agents and brokers.

HHS expects that licensed agents and brokers will continue to assist consumers in accessing health insurance, and will work with agents and brokers to promote enrollment through the Exchange. To the extent permitted by a State, an FFE will permit agents and brokers to enroll individuals in a QHP "through an Exchange" if the agent or broker ensures that an individual completes the eligibility verification and enrollment application using the Exchange Internet site or the agent or broker's site that meets certain conditions; the Exchange transmits the enrollment information to the QHP issuer; and the agent or broker meets other applicable requirements (an agreement, training, and registration). HHS will provide licensed agents and brokers with a portal to the FFE Web site if applicable standards are met.⁸ The portal will allow agents and brokers to help individuals apply for eligibility for enrollment in a QHP and for insurance affordability programs, and if applicable, select and enroll in a QHP through an FFE. To the extent permitted by a State, HHS intends to work with Web-based brokers that meet all applicable requirements to help consumers select health plans online. Additionally, consistent with the Exchange final rule, HHS intends to use an application programming interface (API) to allow individuals to enroll in QHPs through an FFE with the assistance of Web brokers.

⁷ This and some other activities are subject to the availability of Federal funds.

⁸ See 77 Fed. Reg. at 18449 (to be codified at 45 C.F.R. §155.220)

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Title 45: Public Welfare

**PART 155—EXCHANGE ESTABLISHMENT STANDARDS AND OTHER RELATED STANDARDS
UNDER THE AFFORDABLE CARE ACT**

Subpart C—General Functions of an Exchange

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§ 155.205 Consumer assistance tools and programs of an Exchange.

(a) *Call center.* The Exchange must provide for operation of a toll-free call center that addresses the needs of consumers requesting assistance and meets the requirements outlined in paragraphs (c)(1), (c)(2)(i), and (c)(3) of this section.

(b) *Internet Web site.* The Exchange must maintain an up-to-date Internet Web site that meets the requirements outlined in paragraph (c) of this section and:

(1) Provides standardized comparative information on each available QHP, including at a minimum:

(i) Premium and cost-sharing information;

(ii) The summary of benefits and coverage established under section 2715 of the PHS Act;

(iii) Identification of whether the QHP is a bronze, silver, gold, or platinum level plan as defined by section 1302(d) of the Affordable Care Act, or a catastrophic plan as defined by section 1302(e) of the Affordable Care Act;

(iv) The results of the enrollee satisfaction survey, as described in section 1311(c)(4) of the Affordable Care Act;

(v) Quality ratings assigned in accordance with section 1311(c)(3) of the Affordable Care Act;

(vi) Medical loss ratio information as reported to HHS in accordance with 45 CFR part 158;

(vii) Transparency of coverage measures reported to the Exchange during certification in accordance with §155.1040; and

(viii) The provider directory made available to the Exchange in accordance with §156.230.

(2) Publishes the following financial information:

(i) The average costs of licensing required by the Exchange;

(ii) Any regulatory fees required by the Exchange;

(iii) Any payments required by the Exchange in addition to fees under paragraphs (b)(2)(i) and (ii) of this section;

- (iv) Administrative costs of such Exchange; and
 - (v) Monies lost to waste, fraud, and abuse.
- (3) Provides applicants with information about Navigators as described in §155.210 and other consumer assistance services, including the toll-free telephone number of the Exchange call center required in paragraph (a) of this section.
- (4) Allows for an eligibility determination to be made in accordance with subpart D of this part.
- (5) Allows a qualified individual to select a QHP in accordance with subpart E of this part.
- (6) Makes available by electronic means a calculator to facilitate the comparison of available QHPs after the application of any advance payments of the premium tax credit and any cost-sharing reductions.
- (c) *Accessibility.* Information must be provided to applicants and enrollees in plain language and in a manner that is accessible and timely to—
- (1) Individuals living with disabilities including accessible Web sites and the provision of auxiliary aids and services at no cost to the individual in accordance with the Americans with Disabilities Act and section 504 of the Rehabilitation Act.
 - (2) Individuals who are limited English proficient through the provision of language services at no cost to the individual, including
 - (i) Oral interpretation;
 - (ii) Written translations; and
 - (iii) Taglines in non-English languages indicating the availability of language services.
- (3) Inform individuals of the availability of the services described in paragraphs (c)(1) and (2) of this section and how to access such services.
- (d) *Consumer assistance.* The Exchange must have a consumer assistance function that meets the standards in paragraph (c) of this section, including the Navigator program described in §155.210, and must refer consumers to consumer assistance programs in the State when available and appropriate.
- (e) *Outreach and education.* The Exchange must conduct outreach and education activities that meet the standards in paragraph (c) of this section to educate consumers about the Exchange and insurance affordability programs to encourage participation.

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§ 155.210 Navigator program standards.

(a) *General Requirements.* The Exchange must establish a Navigator program consistent with this section through which it awards grants to eligible public or private entities or individuals described in paragraph (c) of this section.

(b) *Standards.* The Exchange must develop and publicly disseminate—

(1) A set of standards, to be met by all entities and individuals to be awarded Navigator grants, designed to prevent, minimize and mitigate any conflicts of interest, financial or otherwise, that may exist for an entity or individuals to be awarded a Navigator grant and to ensure that all entities and individuals carrying out Navigator functions have appropriate integrity; and

(2) A set of training standards, to be met by all entities and individuals carrying out Navigator functions under the terms of a Navigator grant, to ensure expertise in:

(i) The needs of underserved and vulnerable populations;

(ii) Eligibility and enrollment rules and procedures;

(iii) The range of QHP options and insurance affordability programs; and,

(iv) The privacy and security standards applicable under §155.260.

(c) *Entities and individuals eligible to be a Navigator.* (1) To receive a Navigator grant, an entity or individual must—

(i) Be capable of carrying out at least those duties described in paragraph (e) of this section;

(ii) Demonstrate to the Exchange that the entity has existing relationships, or could readily establish relationships, with employers and employees, consumers (including uninsured and underinsured consumers), or self-employed individuals likely to be eligible for enrollment in a QHP;

(iii) Meet any licensing, certification or other standards prescribed by the State or Exchange, if applicable;

(iv) Not have a conflict of interest during the term as Navigator; and,

(v) Comply with the privacy and security standards adopted by the Exchange as required in accordance with §155.260.

(2) The Exchange must include an entity as described in paragraph (c)(2)(i) of this section and an entity from at least one of the other following categories for receipt of a Navigator grant:

- (i) Community and consumer-focused nonprofit groups;
- (ii) Trade, industry, and professional associations;
- (iii) Commercial fishing industry organizations, ranching and farming organizations;
- (iv) Chambers of commerce;
- (v) Unions;
- (vi) Resource partners of the Small Business Administration;
- (vii) Licensed agents and brokers; and
- (viii) Other public or private entities or individuals that meet the requirements of this section. Other entities may include but are not limited to Indian tribes, tribal organizations, urban Indian organizations, and State or local human service agencies.

(d) *Prohibition on Navigator conduct.* The Exchange must ensure that a Navigator must not—

- (1) Be a health insurance issuer;
- (2) Be a subsidiary of a health insurance issuer;
- (3) Be an association that includes members of, or lobbies on behalf of, the insurance industry; or,
- (4) Receive any consideration directly or indirectly from any health insurance issuer in connection with the enrollment of any individuals or employees in a QHP or a non-QHP.

(e) *Duties of a Navigator.* An entity that serves as a Navigator must carry out at least the following duties:

- (1) Maintain expertise in eligibility, enrollment, and program specifications and conduct public education activities to raise awareness about the Exchange;
- (2) Provide information and services in a fair, accurate and impartial manner. Such information must acknowledge other health programs;
- (3) Facilitate selection of a QHP;
- (4) Provide referrals to any applicable office of health insurance consumer assistance or health insurance ombudsman established under section 2793 of the PHS Act, or any other appropriate State agency or agencies, for any enrollee with a grievance, complaint, or question regarding their health plan, coverage, or a determination under such plan or coverage; and
- (5) Provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the Exchange, including individuals with limited English proficiency, and ensure accessibility and usability of Navigator tools and functions for individuals with disabilities in accordance with the Americans with Disabilities Act and section 504 of the Rehabilitation Act.

(f) *Funding for Navigator grants.* Funding for Navigator grants may not be from Federal funds received by the State to establish the Exchange.

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§ 155.220 Ability of States to permit agents and brokers to assist qualified individuals, qualified employers, or qualified employees enrolling in QHPs.

(a) *General rule.* A State may permit agents and brokers to—

(1) Enroll individuals, employers or employees in any QHP in the individual or small group market as soon as the QHP is offered through an Exchange in the State;

(2) Subject to paragraphs (c), (d), and (e) of this section, enroll qualified individuals in a QHP in a manner that constitutes enrollment through the Exchange; and

(3) Subject to paragraphs (d) and (e) of this section, assist individuals in applying for advance payments of the premium tax credit and cost-sharing reductions for QHPs.

(b) *Web site disclosure.* The Exchange may elect to provide information regarding licensed agents and brokers on its Web site for the convenience of consumers seeking insurance through that Exchange.

(c) *Enrollment through the Exchange.* A qualified individual may be enrolled in a QHP through the Exchange with the assistance of an agent or broker if—

(1) The agent or broker ensures the applicant's completion of an eligibility verification and enrollment application through the Exchange Web site as described in §155.405;

(2) The Exchange transmits enrollment information to the QHP issuer as provided in §155.400(a) to allow the issuer to effectuate enrollment of qualified individuals in the QHP.

(3) When an Internet Web site of the agent or broker is used to complete the QHP selection, at a minimum the Internet Web site must:

(i) Meet all standards for disclosure and display of QHP information contained in §155.205(b)(1) and (c);

(ii) Provide consumers the ability to view all QHPs offered through the Exchange;

(iii) Not provide financial incentives, such as rebates or giveaways;

(iv) Display all QHP data provided by the Exchange;

(v) Maintain audit trails and records in an electronic format for a minimum of ten years; and

(vi) Provide consumers with the ability to withdraw from the process and use the Exchange Web site

described in §155.205(b) instead at any time.

(d) *Agreement.* An agent or broker that enrolls qualified individuals in a QHP in a manner that constitutes enrollment through the Exchange or assists individuals in applying for advance payments of the premium tax credit and cost-sharing reductions for QHPs must comply with the terms of an agreement between the agent or broker and the Exchange under which the agent or broker at least:

(1) Registers with the Exchange in advance of assisting qualified individuals enrolling in QHPs through the Exchange;

(2) Receives training in the range of QHP options and insurance affordability programs; and

(3) Complies with the Exchange's privacy and security standards adopted consistent with §155.260.

(e) *Compliance with State law.* An agent or broker that enrolls qualified individuals in a QHP in a manner that constitutes enrollment through the Exchange or assists individuals in applying for advance payments of the premium tax credit and cost-sharing reductions for QHPs must comply with applicable State law related to agents and brokers, including applicable State law related to confidentiality and conflicts of interest.

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§ 155.260 Privacy and security of personally identifiable information.

(a) *Creation, collection, use and disclosure.* (1) Where the Exchange creates or collects personally identifiable information for the purposes of determining eligibility for enrollment in a qualified health plan; determining eligibility for other insurance affordability programs, as defined in 155.20; or determining eligibility for exemptions from the individual responsibility provisions in section 5000A of the Code, the Exchange may only use or disclose such personally identifiable information to the extent such information is necessary to carry out the functions described in §155.200 of this subpart.

(2) The Exchange may not create, collect, use, or disclose personally identifiable information while the Exchange is fulfilling its responsibilities in accordance with §155.200 of this subpart unless the creation, collection, use, or disclosure is consistent with this section.

(3) The Exchange must establish and implement privacy and security standards that are consistent with the following principles:

(i) *Individual access.* Individuals should be provided with a simple and timely means to access and obtain their personally identifiable information in a readable form and format;

(ii) *Correction.* Individuals should be provided with a timely means to dispute the accuracy or integrity of their personally identifiable information and to have erroneous information corrected or to have a dispute documented if their requests are denied;

(iii) *Openness and transparency.* There should be openness and transparency about policies, procedures, and technologies that directly affect individuals and/or their personally identifiable information;

(iv) *Individual choice.* Individuals should be provided a reasonable opportunity and capability to make informed decisions about the collection, use, and disclosure of their personally identifiable information;

(v) *Collection, use, and disclosure limitations.* Personally identifiable information should be created, collected, used, and/or disclosed only to the extent necessary to accomplish a specified purpose(s) and never to discriminate inappropriately;

(vi) *Data quality and integrity.* Persons and entities should take reasonable steps to ensure that personally identifiable information is complete, accurate, and up-to-date to the extent necessary for the person's or entity's intended purposes and has not been altered or destroyed in an unauthorized manner;

(vii) *Safeguards.* Personally identifiable information should be protected with reasonable operational, administrative, technical, and physical safeguards to ensure its confidentiality, integrity, and availability and to prevent unauthorized or inappropriate access, use, or disclosure; and,

(viii) *Accountability.* These principles should be implemented, and adherence assured, through appropriate monitoring and other means and methods should be in place to report and mitigate non-adherence and breaches.

(4) For the purposes of implementing the principle described in paragraph (a)(3)(vii) of this section, the Exchange must establish and implement operational, technical, administrative and physical safeguards that are consistent with any applicable laws (including this section) to ensure—

(i) The confidentiality, integrity, and availability of personally identifiable information created, collected, used, and/or disclosed by the Exchange;

(ii) Personally identifiable information is only used by or disclosed to those authorized to receive or view it;

(iii) Return information, as such term is defined by section 6103(b)(2) of the Code, is kept confidential under section 6103 of the Code;

(iv) Personally identifiable information is protected against any reasonably anticipated threats or hazards to the confidentiality, integrity, and availability of such information;

(v) Personally identifiable information is protected against any reasonably anticipated uses or disclosures of such information that are not permitted or required by law; and

(vi) Personally identifiable information is securely destroyed or disposed of in an appropriate and reasonable manner and in accordance with retention schedules;

(5) The Exchange must monitor, periodically assess, and update the security controls and related system risks to ensure the continued effectiveness of those controls.

(6) The Exchange must develop and utilize secure electronic interfaces when sharing personally identifiable information electronically.

(b) *Application to non-Exchange entities.* Except for tax return information, which is governed by section 6103 of the Code, when collection, use or disclosure is not otherwise required by law, an Exchange must require the same or more stringent privacy and security standards (as §155.260(a)) as a condition of contract or agreement with individuals or entities, such as Navigators, agents, and brokers, that:

(1) Gain access to personally identifiable information submitted to an Exchange; or

(2) Collect, use or disclose personally identifiable information gathered directly from applicants, qualified individuals, or enrollees while that individual or entity is performing the functions outlined in the agreement with the Exchange.

(c) *Workforce compliance.* The Exchange must ensure its workforce complies with the policies and procedures developed and implemented by the Exchange to comply with this section.

(d) *Written policies and procedures.* Policies and procedures regarding the creation collection, use, and disclosure of personally identifiable information must, at minimum:

(1) Be in writing, and available to the Secretary of HHS upon request; and

(2) Identify applicable law governing collection, use, and disclosure of personally identifiable information.

(e) *Data sharing.* Data matching and sharing arrangements that facilitate the sharing of personally identifiable information between the Exchange and agencies administering Medicaid, CHIP or the BHP for the exchange of eligibility information must:

(1) Meet any applicable requirements described in this section;

(2) Meet any applicable requirements described in section 1413(c)(1) and (c)(2) of the Affordable Care Act;

(3) Be equal to or more stringent than the requirements for Medicaid programs under section 1942 of the Act; and

(4) For those matching agreements that meet the definition of "matching program" under 5 U.S.C. 552a (a)(8), comply with 5 U.S.C. 552a(o).

(f) *Compliance with the Code.* Return information, as defined in section 6103(b)(2) of the Code, must be kept confidential and disclosed, used, and maintained only in accordance with section 6103 of the Code.

(g) *Improper use and disclosure of information.* Any person who knowingly and willfully uses or discloses information in violation of section 1411(g) of the Affordable Care Act will be subject to a civil penalty of not more than \$25,000 per person or entity, per use or disclosure, in addition to other penalties that may be prescribed by law.

[77 FR 18444, Mar. 27, 2012, as amended at 77 FR 31515, May 29, 2012]

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